Industrial Conditions as a Community Problem With Particular Reference to Child Labor

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IS any more serious problem conceivable than the inability of a nation to protect and cherish its youth? Is our nation confronted today by this problem? Is this the unavoidable consequence of the recent decision of the United States Supreme Court that the second federal child-labor law is, like the first one, contrary to the Constitution? One object of this article is to state the reasons for the belief that this is the unavoidable consequence of this decision, and to suggest solutions which, though partial, may prove to be valid as far as they go.

It may be argued that the mass of American children are doing fairly well, that it is only the limited group of the child workers who suffer. But is not hardship consciously and continuously inflicted upon one part of the people, contrary to every ideal of democracy and of modern morality? Especially when the victims are defenseless because they are both young and poor? And when their numbers are increasing with extreme rapidity? And when the dangers to which they are exposed grow constantly more threatening?

Need of Federal Child-Labor Laws

When the United States Supreme Court held the first federal child-labor law contrary to the Constitution and therefore void, children whose names had been listed in advance were called into cotton mills and tobacco factories, canneries and glass works, on that same day. They began to work on the following morning as their elder brothers and sisters had done before the law was passed. The Supreme Court has now held the second child-labor law unconstitutional, and again the young children have gone back to work in the mills. Soon they will again be working in factories, workshops, mines and quarries. Yet the arguments in favor of the passage of the first bill still hold. And every fact which led Congress to pass the second bill calls, as urgently as it did then, for the strong hand of the government to guard equally in every part of the country the children who are the nation of tomorrow. This Republic is One.

In enlightened states, the decision makes relatively little difference, for there state laws go farther than either federal measure went. In general, however, it is true that a federal minimum law facilitates farther advances in the more enlightened states. It is in the less enlightened states that the children suffer. Where mob law reigns, what hope is there for local enforcement of local child-labor statutes, or for compulsory education? Where the Commandment, "Thou shalt not kill," and the statute against murder are alike unheeded, who taxes himself to pay efficient local truant officers and high grade state factory inspectors, to interrupt children engaged in earning wages for their parents and creating profits for their employers?

The War told the story. The second federal child-labor law followed promptly upon the nullification of the first. For the ugly facts of our native illiteracy, our sickly, stunted and defective recruits from the North and South alike were fresh in the public mind, revealed by the draft.

For three years, 1919–1922, while federal inspectors enforced the child

labor laws in Mississippi as in Oregon and violators knew that federal courts and the federal Treasury guarded the children, parents and older youth were in demand as wage-earners. During that period children below the age of fourteen years did not compete against their fathers and mothers in the narrow range of occupations covered by the statute.

This nation cannot plead ignorance. It knows the need of uniform child-labor legislation, and from three years' fresh experience it knows the value of federal enforcement. The first federal child-labor law became effective September 1, 1917. It was declared unconstitutional June 3, 1918. The second one became effective April 25, 1919. It was declared unconstitutional May 15, 1922, after being in force three years and three weeks.

Before attempting to get a federal measure, state laws had been tried for more than eighty years and found wanting.[1] A crazy quilt of them almost covered the country. In general the better and more widespread the good state laws, the greater the injustice to the unprotected child toilers in the backward states. How can a vast democratic, industrial Republic be expected to live, if its children are treated according to forty-eight different standards? In Ohio children go to school to the fifteenth or sixteenth birthday, helped by mothers' pensions if the normal breadwinner is dead or disabled. In the state of Washington children are enabled by the workmen's compensation law to continue (to the sixteenth birthday of the youngest member of the family) to live in the home that their breadwinner was paying for when he met death in his employment. There the state, if necessary, enables the family to keep up the payments, and collects the sum from the insurance fund of the employing industry. How can our nation persist if, by contrast with such provisions as this, it lets children in states more highly developed industrially than Washington work ten, eleven or twelve hours daily, and if they are subjected to this strain without sickness insurance or efficient compensation laws and with only a meager minimum of public provision for their education?

Without reasonably uniform justice and cherishing, the children cannot thrive, or later serve the Republic. For this the one indispensable requisite is a federal law based upon an amendment to the federal Constitution. If, as interpreted by eight Justices,[2] the Constitution makes the federal law impossible today, if it serves as a pretext for restoring young children to their exploiters, and gives federal sanction to overwork of older children, clearly that Constitution, 143 years old, must be modernized. No ancient instrument is *sacrosanct* which imperils the nation by imperiling its youth. The Constitution adopted in 1789 is older than the earliest American textile mill.

No theory of the distribution of powers of government is sound, which ignores injury to boys and girls, such as the textile, tobacco factories, canneries and glass factories have inflicted continuously, except during the brief period of federal safeguarding now ended by the decision of May 15.

WHY DOES NOT INDUSTRY PAY ITS FULL COSTS?

Since the close of the War, in the short period since November 1918,

[1] In June 1882, forty years ago, the writer filed as a graduating thesis at Cornell University, a study of the Child and the Law, which was published in the *International Review*. A part of the material then used dated back forty years.

[2] Mr. Justice Clark dissented.

ours, already the largest in volume, has become the most dangerous industry in the world through the exposure of men, women and children to poisons new in America. On an enormous scale we have taken over the German poisons (dyes and solvents) without the safeguards which the Germans had been evolving and applying step by step as the industry developed.[1]

The Women's Division of the New York State Industrial Commission is now making a study of 2997 cases of compensation paid for injuries to minors under eighteen years of age in New York State in 1919. This study embraces only injuries which have kept the person involved out of work two weeks or longer. It is indicative of the prevailing lenient view of the responsibility of the industry for this suffering, that these are still officially called accidents which should always, if only for the sake of straight thinking, be called injuries. Nothing preventable should ever be called an accident.

The proportion of young workers grows with the evolution of machinery and the simplifying of processes, and the younger the workers the greater the danger from both machines and poisons.[2] It is precisely at the silly, adventurous age that the young workers are allowed by our statutes to leave school and enter industry.

Because the father's income is insufficient the children work. In the textiles the wage unit has always been the family. Fathers have never expected to be the sole support. Under the pressure of competition the child becomes the means of its own undoing, and contributes to that of its family. That dependence upon the children's earnings which was once the especial disgrace of the textile industries has spread far and wide to other occupations.

It is impossible adequately to characterize the sinister significance of our having virtually no compulsory sickness insurance, and no uniform workmen's compensation. It is a measure of the cynicism of the indifferent public. It is an index of the absence of statesmanship among those social workers who devote themselves to repairing and providing for the charitable maintenance of industrial wrecks, instead of stimulating industry to make itself safe and healthful by compelling it to pay for its heavy share of the disease and disaster befalling breadwinners whose withdrawal causes boys and girls to become wage-earners.

The fact that we lack such sickness insurance and uniform adequate compensation is incessantly brought before our minds by the multiplying efforts to apply to the rehabilitation of industrially handicapped people the new skill and the broadened resources developed during the War. What is better advertised than the widespread effort to rehabilitate the industrially handicapped? But why do we first allow industry to handicap them?

To get compensation, even where there are laws, always means a struggle. The injured person is hampered by one time-limit within which the application of the victim, whether himself the sufferer, or the survivor of the killed, must be made, and another (fourteen days in New York State) before which his effort *cannot* begin. If the disability lasts no longer than fourteen days the burden must be borne by the sufferer; no compensation is forthcoming.

The injured is further hampered by technicalities in the presentation of compensation claims. Rules there

[1] This change has been made widely known by the publications of Alice Hamilton of the Faculty of the Harvard Medical School.

[2] See the series of articles entitled "The Iron Man," by Arthur Pound in the *Atlantic Monthly*, 1921–1922.

must be, of course. But many existing ones are indeed hard to explain to the naive sense of justice of young working people.

There is even some danger for the workers to be guarded against where mothers who are entitled to industrial compensation receive civil pensions. If the pension is granted without sufficient investigation, the negligent employer may escape without paying his fair continuing share for the loss of the normal breadwinner. The stimulus to the employing corporation to make the place of work safe is then lost, and the taxpayers' contribution to the welfare of bereft mothers may fail to enable them to remain at home with the children. Because the financial burden here falls in the wrong place, upon the taxpayers instead of the recklessly conducted industry, we see families both receiving allowances from public funds and doing work in the home, mother and children together, for the sweated industries.

It is obviously because they are poor that the mothers are subjected to this. If they were in a position to command wise advice they could better cope with the difficulties of the compensation laws and escape the clutches of the sweating system. Verily the destruction of the poor is their poverty! But why do we Americans allow our industries this unhallowed freedom to produce poverty as a regularly accepted by-product of industry?

WHERE DOES THE TROUBLE LIE?

There is much painful conflict in the public mind. People who have faithfully struggled for effective child-labor laws are asking themselves the question: Is it truly the Constitution which is the enemy of the wage-earning children and therefore of the future of the Republic? Or is it a mere political theory? Or is it the humble willingness of the people to sacrifice the children to a cynical theory of government?

In general the trouble seems to be twofold. There is this old slaveholders' dogma that the states must be free to make a nation-wide institution of the wage slavery of children as they once attempted to make chattel slavery nation wide. The second element seems to be our callous acceptance of the fact as inevitable and permanent that, throughout wide areas and in many forms of default, industry does not pay its own full costs.

Secretary Hoover recommended to the National Conference of Social Work at Providence on June 27, 1922, that they make one more combined effort to deal with child labor state by state. Then after another demonstrable failure a Constitutional amendment should be tried. This idea is utterly immoral and wrong. The children, according to this, are to go back to their slavery while our nation makes further effort to do the impossible,—to assure to them the equal protection of the law under forty-eight divergent legislatures. After it is conclusively shown that they are again suffering stupefaction and physical injury, the slow task of amending the Constitution may be undertaken.

Morons are now authoritatively described as persons incapable of learning from experience. Should we not show ourselves to be a nation of morons if, after eighty years of effort which we definitely abandoned in 1906 when we introduced the federal child labor bill into Congress, we should now return to that fundamentally discredited method?

The time to save the working children of the United States is now. Underlying everything is the wanton, wholesale sacrifice of their breadwinners. For it is still the rule that fathers maintain their children.

While we enact the amendment we must strive also to remove the evils sketched above. And may we be forgiven if we reiterate the ungracious query: Where have the social workers been throughout the long struggle to compel the guarding of life, limb and health in industry? Who have helped except the American Association for Labor Legislation, the Consumers' League, the Child-Labor Committee, and the labor organizations?

The possibilities of state regulation were exhausted before the federal laws were passed. The possibilities of federal regulation appear to have been, for the present, exhausted. To solve this grievous moral problem, what remains is, therefore, to enact a federal child-labor amendment. With voting mothers and teachers added to the men who elected the Congress which passed the federal child-labor laws, it is reasonable to hope that the achievement of this amendment may be speedy.

If with the passage of time, and the unimaginable changes in American industry since 1789, the Constitution has become an obstacle to righteousness, as it was once held to be the bulwark of chattel slavery, let us profit by the tragic teaching of the Civil War, and mend our ways and our fundamental law before it is again too late.